MT LEGISLATIVE HISTORY

Chapter 402 19 75

Bill H _____ S 57 Original bill & hist. ___C

H. Committee on Lab & Emp. Rel. S. Committee on Lab & Emp. Rel.

Hearing Date(s)	1/17	___C	Hearing Date(s)	3-7	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	1/17	___C		3-7	___C

BEST COPY AVAILABLE

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LC 0059

Senate BILL NO. 57

INTRODUCED BY Himsl, Flynn, Jackson, Mesko, Olson, T. Smith, Thiessen

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR DISCLOSURE TO THE DIVISION OF WORKMEN'S COMPENSATION OF ATTORNEY FEE ARRANGEMENTS, AND REGULATING ATTORNEY FEES IN WORKMEN'S COMPENSATION CASES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Attorney's fees. (1) When an attorney represents or acts on behalf of a claimant on any workmen's compensation claim, the attorney shall submit to the division an affidavit stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The administrator of the division may regulate the amount of the attorney's fee in any workmen's compensation case. In regulating the amount of the fee, the administrator shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the administrator may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

-End-

STATE OF MONTANA

REQUEST NO. 23-75

FISCAL NOTE

Form BD-15

In compliance with a written request received January 11, 19 75, there is hereby submitted a Fiscal Note for House Bill 57 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to eliminate the 10% surcharge for individual income tax purposes. This bill is identical to House Bill 16 except that House Bill 57 provides for an immediate effective date.

ASSUMPTIONS:

1. Estimated total income tax collections are $104.8 million in FY 76 and $124.0 million in FY 77.

2. House Bill 57 will be passed by April 1; withholding tables will be adjusted accordingly to reflect the tax decrease on entire CY 75 income. Thus, underwithholding will occur from April 1 to December 31 to balance the overwithholding from January 1 to March 31.

3. All of CY 75 loss will be realized in FY 76.

FISCAL IMPACT:

	FY 76	FY 77
Estimated individual income tax collections under current law	$ 104.8 million	$ 124.0 million
Estimated collections under proposed law	95.3 million	112.7 million
Decrease in collections	$ 9.5 million	$ 11.3 million

CONCLUSION:

Enactment of House Bill 57 would result in a maximum revenue loss of $20.8 million during the 76-77 biennium. Income tax collections are allocated 64% to the General Fund, 25% to the School Equalization Aid Earmarked Revenue Fund, and 11% to the Long-Range Building Program.

NOTE:

In reference to the fiscal note prepared on House Bill 16, the difference in effective dates will not change the fiscal impact since the reduced withholdings in the last quarter of FY 75 will not be collected until FY 76.

Michael D. Billings

BUDGET DIRECTOR
Office of Budget and Program Planning
Date: January 16, 1975

44th LEGISLATIVE SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 3	1/7/75		1/8/75	Referred to Judiciary					
SB 50	1/10/75	1/20,1/31 2/7,2/10,2/24		Held in Committee					
SB 56	1/11/75	1/17/75	1/17/75	1/17/75					
SB 57	1/11/75	1/17/75	1/17/75			1/17/75			
SB 59	1/11/75	1/17/75	1/17/75			1/17/75			
SB 82	1/16/75	1/20/75	1/20/75			1/20/75			
SB 88	1/16/75	1/22/75	1/22/75	1/22/75					
SB 99	1/17/75	1/22/75	1/22/75	1/22/75					
SB 107	1/17/75	1/22/75	1/22/75	1/22/75					
SB 114	1/17/75	1/22/75	1/22/75	1/22/75					
SB 119	1/18/75	1/22/75	1/22/75	1/22/75					
SB 129	1/20/75	1/29/75	1/29/75			1/29/75			
SB 187	1/23/75	1/29/75	1/29/75		1/29/75				
SB 259	2/17/75	2/19/75	2/19/75	Held in Committee					
SB 265	2/18/75	2/24/75	2/24/75			2/24/75			
SB 385	2/6/75	2/12/75	2/14/75			2/14/75			
SB 392	2/7/75	2/14/75	2/14/75			2/14/75			

(Use Separate Sheet for Senate, House Bills, and Resolutions)

Jim Murray, of the AFL-CIO, said they endorsed SB 59 and asked for passage.

George Wood, Executive Secretary of the Montana Self-Insurers Association, stated he was in support of the bill.

Norman Grossfield, Director of Workmens Compensation, appeared in support of SB 59. He said it is a necessary change for a claimant is entitled to know exactly what is going on. Mr. Grossfield said that in time to come a claimant may not have the same attorney. Therefore, the claimant should have a record of the settlement or compromise so if in the future he wishes to reopen the case he would know what had taken place before.

The committe then held discussion on the bill. During this discussion Chairman Lee asked if this notification also took in the denial of a settlement. Graham said that all information would go to the claimant even if it had been refused. Mr. Grossfield also replied on the question by saying that the bill says approving and technically does not cover denial.

CONSIDERATION OF SENATE BILL NO. 57: Senator Himsl author of SB 57 testified in opposition of the bill. (A copy of his testimony is attached.)

Jim Murray, of the AFL-CIO, supports the concept and feels there is a need to implement in the division rules, a review commission to make recommendations to the commission on attorney fees. It would provide the claimant with a place to take their grievances. Mr. Murray thought that Section 1, subsection (1), line 13, the word "affidavit" was not suitable and that the words "contract of employment" would be more suitable.

George Wood, of the Montana Self-Insurers Association, rose in support of SB 57 and agreed with Jim Murray that trouble could arise from the word "affidavit", and with this change would be in agreement with the bill.

Mr. Grossfield, of Workmens Compensation, in support of the bill stated that all states have a similar bill.

Mr. Romine, attorney, appeared in opposition to the bill. (A copy of his testimony is attached.)

Discussion was then held by the committee on the bill.

DISPOSTION OF SENATE BILL NO. 56:
Senator Blaylock moved SB 56 DO PASS. The motion carried unanimously, with Senator Etchart excused.

DISPOSITION OF SENATE BILL NO. 59:
Senator Haselbaker moved that SB 59 DO PASS. Senator Norman made a substitute motion to amend page 2, section 1, line 5, after the word "approving" insert the words "or denying". Motion carried unanimously with Senator Etchart excused. Senator Blaylock moved that SB 59 DO PASS AS AMENDED. Motion carried unanimously with Senator Etchart excused.

DISPOSTION OF SENATE BILL NO. 57: Senator Hazelbaker moved that page 1, section 1, subsection (1), line 13 be amended by striking the words "an affidavit" and inserting "a contract of employment". Motion carried unanimously. Senator Smith moved that SB 57 DO PASS AS AMENDED. Motion carried with Senator Olson opposed and Senator Etchart excused.

ADJOURN:

There being no further business, the meeting was adjourned at 10:50 a.m.

Robert E. Lee, Chairman

Senate Bill 57 Re: Attorney's filing fee arrangement with WCD

Senate Bill 57 is a bill recommended by the special interim Committee on Workmen's Compensation problems. It simply provides that "When an attorney represents or acts on behalf of a claimant on any workmen's compensation claim, the attorney shall submit to the Division an affidavit state specifically the terms of the fee arrangement between the attorney and the claimant.

The bill does not set attorney fees. We recognize that the Workmen's Compensation field of law is often a specialty and a difference in fees for attorney's expertise is a reasonable consideration. We see this as no violation of the confidential relationship between an attorney and his client, since a possible award involves another relationship with the carrier of the insurance. A contract agreement!

The bill does provide that the administrator may regulate the amount of the fee by evaluating the time, complexity of the case, and other relevant matters. It reinforces the present law: 92-827 which provides: "Whenever the claimant or plaintiff is represented by an attorney either before the board or the courts, the industrial accident board may, in its discretion or upon application of the claimant or plaintiff, fix the amount of the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the board shall be paid by the claimant or plaintiff."

This proposal would help clear up a common area of complaint. It will protect the claimant who apparently is often confused and misunderstands his attorney and later rebels at the arrangement; it would also protect the attorney from any misunderstanding of the arrangements with his client.

I trust you will see the merit of this proposal and I urge your favorable consideration of Senate Bill 57.

NAME William L. Romine Senate BILL NO. 57

ADDRESS 320 E. 6th, P.O. Box 1691 DATE 1-17-75

~~Helena~~

WHOM DO YOU REPRESENT? Myself

SUPPORT?_____ OPPOSE?_____ AMEND?xxxxxxxx

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

I oppose the second sentence of Section 2 of the Bill. This sentence allows the administrator to set the amount of the attorney fee after the attorney has performed his services.

Most attorney fees in Workmen's Compensation cases are based upon a contingent fee arrangement. In such cases, both the attorney and the client take a change. The attorney may perform his services and yet recover nothing for his client. In that case, the attorneys is not paid, and the client receives these legal services free of charge.

If Senate Bill 57 passes in its present form, only the lawyer is taking a chance, because if he wins a recovery, the administrator may reduce his fee. This will result in lawyers refusing to take these cases, or taking them only on a time and expense basis.

I urge the committee to amend Section 2 by striking in its entirety the second sentence of such section.

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 1-17-75 SENATE Bill No. 57 Time

NAME	YES	NO
Senator Robert Lee, Chairman	✓	
Senator Richard Smith, Vice Chairman	✓	
Senator Chet Blaylock	✓	
Senator Mark Etchart EXCUSED		
Senator Frank Hazelbaker	✓	
Senator John Mehrens	✓	
Senator Bill Norman	✓	
Senator S. A. Olson	✓	

Mary Anne Choquette
Secretary

Robert E. Lee
Chairman

Motion: Senator Hazelbaker moved that page 1, section 1, subsection (1), line 13 be amended by striking the words "an affidavit" and inserting "a contract of employment". Motion carried unanimously with Senator Etchart excused.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date 1-12-73 SENATE Bill No. 57 Time

NAME	YES	NO
Senator Robert Lee, Chairman	—	
Senator Richard Smith, Vice Chairman	—	
Senator Chet Blaylock	—	
Senator Mark Etchart EXCUSED		
Senator Frank Hazelbaker	—	
Senator John Mehrens	—	
Senator Bill Norman		—
Senator S. A. Olson	—	

Mary Anne Choquette
Secretary

Robert E. Lee
Chairman

Motion: Senator Smith moved that SB 57 DO PASS AS AMENDED. Motion carried with Senator Olson opposed and Senator Etchart excused.

(include enough information on motion—put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

January 17, 19 75

MR. PRESIDENT

We, your committee on Labor and Employment Relations

having had under consideration Senate Bill No. 57

Respectfully report as follows: That Senate Bill No. 57

introduced bill, be amended as follows:

1. Amend page 1, section 1, subsection (1), line 13
   Following: "division"
   Strike: "an affidavit"
   Insert: "a contract of employment"

DO PASS AS AMENDED

Senator Robert E. Lee Chairman.

STATE PUB. CO.
HELENA, MONT.

LABOR & EMPLOYMENT RELATIONS COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 56	Provide payment of Workmen's Comp. claimant's attorney & witness fees.	1/23	Himel Flynn	3/7	BE CONCURRED IN	3/7
SB 57	Provide disclosure the WCD of attorney fee arrangements and regulating attorney fees in these cases.	1/25	Himel Flynn	3/7	BE CONCURRED IN	3/7
SB 59	Provide for direct notice of award to claimants in WCD cases.	1/25	Graham Himel	1/31	BE CONCURRED IN	1/31
SB 3	Pertaining to apprenticing of minors are repealed.	1/28	Regan Greely	3/14	BE CONCURRED IN	3/14
SB 82	Relative to medical benefits under WCD, add a provision requiring employer or insurer to replace damage or lost eyeglasses & dentures.	1/28	Norman Haselbaker	3/5	BE CONCURRED IN	3/5
SB 88	WCD, remove limitations on medical benefits so it complies fully w/report of national commission of WCD.	1/29	Haselbaker	3/12	BE CONCURRED IN	3/12

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS
HOUSE OF REPRESENTATIVES
March 7, 1975

A meeting of the Labor & Employment Relations Committee was held on Friday, on the above date, at 10:30 a.m. in Room 428A of the Capitol Building, with Chairman Kimble presiding. Representatives Johnson and Ellis were excused with all other members present.

The following bills were heard in this order: SB 57
SB 56

SB 57--SPONSOR: Matt Himsl, district 9, said this bill was recommended by the interim committee on Workmen's Compensation, which states that when an attorney represents a claimant under WCD, he shall submit to the division a contract of employment stating the terms of the fee arrangements. The fee is negotiable, based on the time involved, and the complexity of the case. This would settle arrangement disputes and protect the claimant and the attorney. Norm Grosfield, administrator, WCD, said that he worked on the interim committee last year, and the the bill was held over for a select committee review. They have no objections from the attorneys (exhibit I).

SB 56--SPONSOR: Matt Himsl, district 9, said this was also recommended by the interim committee, which deals with the payment of attorney fees. The basic rule now is that each party pays his own lawyer, win or lose. Under this bill, the fee for Workmen's Comp. cases, would be based on the difference between the carried offered and the final award. By doing this the injured worker would not be a victim of any failure of the system (exhibit II). Jim Murry, AFL-CIO, submitted exhibit III in support of both bills.

There being no further testimony, the committtee went into executive discussion.

SB 57--BABCOCK MOVED SB 57 BE CONCURRED IN, SECONDED BY ELLERD. MOTION CARRIED UNANIMOUSLY.

SB 56--Babcock asked if the award determined what the attorney fees would be, and Himsl replied yes, and that this bill would give the WCD the position to evaluate the attorney costs and their latitude.

GUTRAIE MOVED SB 56 BE CONCURRED IN, SECONDED BY GILLIGAN. MOTION CARRIED UNANIMOUSLY.

There being no further business, the meeting was adjourned to reconvene March 10, 1975 at 10:30 a.m.

[illegible], Chairman

Gloria Hoag, Secretary

Exhibit I

Final

Senate Bill 57 is a bill recommended by the special interim Committee on Workmen's Compensation problems. It simply provides that "When an attorney represents or acts on behalf of a claimant on any workmen's compensation claim, the attorney shall submit to the Division an affidavit stating a contract of employment specifically the terms of the fee arrangement between the attorney and the claimant.

The bill does not set attorney fees. We recognize that the Workmen's Compensation field of law is often a specialty and a difference in fees for attorney's expertise is a reasonable consideration. We see this as no violation of the confidential relationship between an attorney and his client, since a possible award involves another relationship with the carrier of the insurance. A contract agreement!

The bill does provide that the administrator may regulate the amount of the fee by evaluating the time, complexity of the case, and other relevant matters. It reinforces the present law: 92-827 which provides: "Whenever the claimant or plaintiff is represented by an attorney either before the board or the courts, the industrial accident board may, in its discretion or upon application of the claimant or plaintiff, fix the amount of the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the board shall be paid by the claimant or plaintiff."

This proposal would help clear up a common area of complaint. It will protect the claimant who apparently is often confused and misunderstands his attorney and later rebels at the arrangement; it would also protect the attorney from any misunderstanding of the arrangements with his client.

I trust you will see the merit of this proposal and I urge your favorable consideration of Senate Bill 57.

Exhibit III
3-7-75

MONTANA STATE AFL-CIO
APRIL 29 1936

Box 1176, Helena, Montana
ZIP CODE 59601

JAMES W. MURRY
EXECUTIVE SECRETARY

LUNDY SHOPPING CENTER
MISSOULA HIGHWAY

March 7, 1975

Honorable Gary Niles Kimble, Chairman
House Labor Committee
State Capitol
Helena, Montana 59601

Dear Representative Kimble:

The Montana State AFL-CIO, through an unavoidable conflict, is unable to appear today to testify on Senate Bills 56 and 57 which the committee has under consideration. Instead, we request that this letter be read and made part of the committee's record.

The two bills to be heard this morning are truly significant pieces of legislation that add a vital element of control, whose absence in the present law contributed to many of the abuses within the Workmen's Compensation Division.

We support fully both Senate Bill 56, which provides for determination and payment of attorney and witness fees in certain cases, and Senate Bill 57 providing for disclosure and regulation of attorney's fees.

The Interim Legislative Committee that produced these two measures is to be commended for their diligence and their attention to the matter of attorney fees and protection for those who need assistance in controverted claims.

These bills afford injured workers a bit more protection than they have had. For that reason we wholeheartedly ask that the committee approve Senate Bills 56 and 57 and recommend their enactment by the entire House of Representatives.

Sincerely,

James W. Murry, Executive Secretary
Montana State AFL-CIO

JWM:js

cc: All Members of the House Labor Committee

SENATE BILL NO. 57

INTRODUCED BY HIMSL, FLYNN, GRAHAM, MATHERS, OLSON, R. SMITH, THIESSEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR DISCLOSURE TO THE DIVISION OF WORKMEN'S COMPENSATION OF ATTORNEY FEE ARRANGEMENTS, AND REGULATING ATTORNEY FEES IN WORKMEN'S COMPENSATION CASES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Attorney's fees. (1) When an attorney represents or acts on behalf of a claimant OR ANY OTHER PARTY on any workmen's compensation claim, the attorney shall submit to the division ~~an--affidavit~~ A CONTRACT OF EMPLOYMENT stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The administrator of the division may regulate the amount of the attorney's fee in any workmen's compensation case. In regulating the amount of the fee, the administrator shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the administrator may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

-End-